

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	LaSalle Bank National Assoc.)	
	Map 134-00-0, Parcel 255.00)	
	Commercial Property)	
	Tax Years 2005 & 2006)	Davidson County

INITIAL DECISION AND ORDER

Statement of the Case

The Davidson County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$1,485,800	\$4,867,800	\$6,353,600	\$2,541,440

On November 8, 2005, the State Board of Equalization ("State Board") received an appeal by the property owner. This property was not appealed to the Davidson County Board of Equalization ("county board") during its regular 2005 session.

The undersigned administrative judge conducted a jurisdictional hearing of this matter on May 17th, 2007, in Nashville at the Division of Property Assessment. In attendance at the hearing were Richard T. Hays, Taxpayer's Agent; David Sexton, MBA, Senior Appraiser, of R.K. Barnes & Associates, Inc., Real Estate Appraisal and Consulting Firm; and Dean Lewis from the Davidson County Assessor's Office.

Findings of Fact and Conclusions of Law

This appeal concerns a commercial tract of land (11.37 acres) containing 121,405 gross finished square feet of a warehouse/business center space located at 475 Metroplex Drive in Nashville. The subject property was built in 1982 and features concrete construction.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing the State Board of Equalization. T.C.A. §§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b)(2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

The taxpayer shall have a right to a hearing and determination to show **reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except where the failure to meet them is **due to illness or other circumstances beyond the taxpayer's control.**

(*Emphasis added*), *Associated Pipeline Contractors Inc.*, (Williamson County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *Johr. Orovets*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from timely appealing to the State Board of Equalization. It is the taxpayer's burden to prove that they are entitled to the requested relief. In this case the taxpayer relies heavily on a decision by Administrative Judge Mark Minsky in *In Re: Garden Foxwood, Ward 074, Block 090, Parcel 00079, Shelby County, Tax Year 2005* in which he decided that reasonable cause did exist to justify the taxpayers failure to timely file before the County Board of Equalization (copy of the decision is incorporated by reference to this decision). It appears that the support manager in that case was the same individual for this property¹, therefore, the administrative judge finds that reasonable cause does exist and the State Board has jurisdiction to hear the appeal.

As to the issues of value, Mr. Hays states that his client acquired the property in lieu of foreclosure on January 25, 2005 for \$3,450,000. Mr. Sexton stated that there will be a stabilized value as of December 1, 2007 of \$3,700,000. Mr. Sexton further stated that he was assigned to determine the **leased fee market value** at a 53% occupancy rate, the previous year there was a 50% occupancy rate (at the time there were 24 tenants and 22 vacancies).

Mr. Sexton further stated that he believes that due to the rental history of this property, the rate should be at the lower end of the market because the property is suffering economically. The esthetics of the property², in his opinion, contributes to the property's inability to generate income. Mr. Hays believes that generally, the warehouse would or should generate rent at \$3.50 per square foot with rent for the office space at \$10.00 a square foot. In an attempt to keep the property occupied Mr. Robertson, the manager, lowered the office rent to \$5.00 a square foot with limited success.

Mr. Lewis for the County contends that the value for the property should be \$6,561,800 based on his analysis of the income approach to the value of the subject property (County's exhibit #1).

Mr. Sexton introduced into evidence his Appraisal Report (in excess of 135 pages with addenda's) which was marked as Taxpayer's Exhibit #1, the analysis used all three (3) approaches to value.

¹ The support manager had numerous family obligations that prevented him from correctly exercising his responsibilities to his employer.

² In comparison to similar properties in the neighborhood.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal institute, *The Appraisal of Real Estate* at 50 and 62. 12th ed. 2001. However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is **market value**. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 2 1-22.

Without question the leased fee interest is different than the market value³, the leased fee interest is an ownership **interest** held by the landlord with the rights of use and occupancy conveyed by lease (contract) to others. In determining market value several factors are taken into consideration that are not used in the determination of the leased fee value of a property. For ad valorem tax purposes we look for market value the whole bundle of rights associated with a property. *Property Assessment Valuation*, 2nd ed., IAAO, 1996, pp18-19.

The administrative judge finds that the fair market value of subject property as of January 1, 2005 and January 1, 2006 constitutes the relevant issues in this case. In the analysis of the market value data we remain mindful that this is income producing property so that the income approach to the determination of value would be the most probable at arriving at an accurate *value*⁴ for our purposes.

Mr. Sexton's analysis and Mr. Hays arguments, while thorough, does not in the opinion of the administrative judge meet the burden set out by case law and statutes. See State Board of

³ Market Value is defined in the Uniform Standards of Professional Appraisal Practice (USPAP) as follows: A type of value, stated as an opinion, that presumes the transfer of a property (i.e., a right of ownership or a bundle of such rights), as of a certain date, under specific conditions set forth in the definition of the term identified by the appraisers applicable in an appraisal. (USPAP, 2002, Ed.)

⁴ Value is the present worth of all the anticipated future benefits to be derived from a property. The benefits, in the form of an income stream or amenities, are those benefits anticipated by the market. *Id.* @ pp19-35.

Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn.App. 1981).

In this type of an appeal the petitioner must show by a preponderance of the evidence that an allegation is true or that the issue should be resolved in favor of that party. Uniform Rules of Procedure for Hearing Contested Cases. Rule 1360-4-1-.02 (7).

ORDER

It is, therefore, ORDERED that the following values be adopted for tax years 2005 and 2006:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$1,485,800	\$4,867,800	\$6,353,600	\$2,541,440

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 16th day of June, 2007. *[Signature]*

[Signature]

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Richard Hays, Senior Tax Consultant
Jo Ann North, Assessor of Property